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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,826	07/15/2003	Nicolo Altamore	2206.68983	7384

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EXAMINER	
JEFFERY, JOHN A	

ART UNIT	PAPER NUMBER
3742	

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/619,826	ALTAMORE, NICOLO
	Examiner	Art Unit
	John A. Jeffery	3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-7 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-7 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 15 July 2003 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 20040326.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 4 are rejected under 35 USC 102(b) as being anticipated by Carlson (US 1,731,522). Carlson (US 1,731,522) discloses an electrically-heated curling iron comprising pivoting first and second legs 1 and 2 with respective concave and convex surfaces nested together. See Figs. 1 and 2 and P. 1, lines 41-53. "Clamp lever" 8 controls the pivoting action.

Claims 1, 2, 4, 5, and 7 are rejected under 35 USC 102(b) as being anticipated by Habibi (US 6,119,702). Habibi (US 6,119,702) in Figs. 2, 14, and 15 discloses a hair curling iron with top and bottom surfaces 12 and 10 with a nested convex/concave shape. According to col. 2, line 64 – col. 3, line 6, two electric heating elements 32 may be provided such that an electric heating element is adjacent each respective surface 10 and 12. Note the "clamp levers" (handles) in Fig. 2 that control the pivoting action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habibi (US 6,119,702) in view of Nicol, Jr. (US 459,146). The claims differ from Habibi (US 6,119,702) in calling for the first leg to be biased against the second leg with a release lever to overcome the biasing force. But biasing one leg of a curling iron against another and overcoming such force with a release lever is well known in the art. Nicol, Jr. (US 459,146), for example, discloses a curling iron with a first leg 4 that is biased towards stationary leg 1. Depressing button 9 on release lever 8 overcomes this biasing force and pivots first leg 4 away from stationary leg 1. Compare Fig. 2 (button 9 depressed resulting in pivoting first leg 4) with Fig. 1 (button 9 not depressed). In view of Nicol, Jr. (US 459,146), it would have been obvious to one of ordinary skill in the art to bias the first leg toward the second leg and provide a release lever in the previously described apparatus so that only one leg need move to effect pivoting. Such an arrangement simplifies apparatus operation because the stylist can pivot the legs apart with a single hand during styling by merely depressing the release lever with the thumb.

Claims 2, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson (US 1,731,522) in view of Brodbeck et al (US 1,866,747). The claims differ from the previously cited prior art in calling for heating both surfaces. Although Carlson (US 1,731,522) heats only one surface (note heater 4), heating both surfaces of a curling iron with respective electric heating elements is well known in the art. Brodbeck et al (US 1,866,747), for example, discloses providing two electric heating resistance elements 11 adjacent both upper and lower surfaces of a curling iron respectively. See Fig. 1 and P. 1, lines 63-70. Such an arrangement more uniformly heats the iron and hair. In view of Brodbeck et al (US 1,866,747), it would have been obvious to one of ordinary skill in the art to provide distinct electric heating elements for both the bottom and top surfaces of the previously described apparatus to more uniformly heat the iron and hair.

Moreover, no criticality is seen in the use of multiple heating elements in lieu of a single heating element in view of applicant's statement in the instant specification on P. 5, first full paragraph. In that passage, applicant states that "*...it is also contemplated that only one of the legs 12, 14 is heated as in conventional curling irons, provided the nested concave/convex shape of the opposing surfaces 18, 24 is maintained.*" Accordingly, because providing multiple heating elements is not critical over using a single heating element, such a feature is not patentable over Carlson (US 1,731,522).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson (US 1,731,522) in view of Nicol, Jr. (US 459,146). The claim differs from Carlson (US

1,731,522) in calling for the first leg to be biased against the second leg with a release lever to overcome the biasing force. But biasing one leg of a curling iron against another and overcoming such force with a release lever is well known in the art. Nicol, Jr. (US 459,146), for example, discloses a curling iron with a first leg 4 that is biased towards stationary leg 1. Depressing button 9 on release lever 8 overcomes this biasing force and pivots first leg 4 away from stationary leg 1. Compare Fig. 2 (button 9 depressed resulting in pivoting first leg 4) with Fig. 1 (button 9 not depressed). In view of Nicol, Jr. (US 459,146), it would have been obvious to one of ordinary skill in the art to bias the first leg toward the second leg and provide a release lever in the previously described apparatus so that only one leg need move to effect pivoting. Such an arrangement simplifies apparatus operation because the stylist can pivot the legs apart with a single hand during styling by merely depressing the release lever with the thumb.

Claim 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson (US 1,731,522) in view of Nicol, Jr. (US 459,146) and further in view of Brodbeck et al (US 1,866,747). The claim differs from the previously cited prior art in calling for heating both surfaces. Although Carlson (US 1,731,522) heats only one surface (note heater 4), heating both surfaces of a curling iron with respective electric heating elements is well known in the art. Brodbeck et al (US 1,866,747), for example, discloses providing two electric heating resistance elements 11 adjacent both upper and lower surfaces of a curling iron respectively. See Fig. 1 and P. 1, lines 63-70. Such an arrangement more uniformly heats the iron and hair. In view of Brodbeck et al (US 1,866,747), it would

have been obvious to one of ordinary skill in the art to provide distinct electric heating elements for the bottom and top surfaces respectively of the previously described apparatus to more uniformly heat the iron and hair.

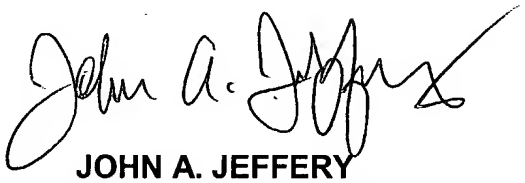
Other Pertinent Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The art should be both separately considered and considered in conjunction with the previously cited prior art when responding to this action. US 596, US 146, US 852 disclose curling irons relevant to the instant invention.

Conclusion

Any inquiry concerning this or earlier communications from the examiner should be directed to John A. Jeffery at telephone number (703) 306-4601 or fax (703) 305-3463. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 4:30 PM EST. The examiner can also be reached on alternate Fridays.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist whose telephone number is (703) 308-0861.



JOHN A. JEFFERY
PRIMARY EXAMINER

5/18/04